IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4414 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VISHALA

Versus

STATE OF GUJARAT

Appearance:

MR KM PATEL for Petitioner

MR AS DAVE for Respondent No. 1

MR MUKUL SINHA for Respondent No. 2

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 15/09/98

ORAL JUDGEMENT

The petitioner herein is a partnership firm carrying on business of running a restaurant at Narol in city of Ahmedabad in the name and style of "Vishala". The respondent no.1 is the State of Gujarat through the Secretary, Labour Department, and respondent no.2 is the union of workmen which represents the workmen engaged

under the petitioner. The petition seeks to challenge the order dated 21st May 1998 issued by respondent no.1 under the provisions of the Industrial Disputes Act, 1947. The said order is a composite order referring the dispute mentioned in the Schedule thereto order for adjudication of the Industrial Tribunal No.1, Ahmedabad, and simultaneously prohibiting the continuance of lock out under section 10(3) of the said Act. Mr K.M. Patel has appeared for the petitioner. Mr A.S. Dave has appeared for respondent no.1 and Mr Mukul Sinha for respondent no.2.

2 The principal submission of Mr Patel is that there were continuous acts of indiscipline on the part of the employees working under the petitioner. That led the petitioner to issue a notice dated 12th March 1998 which was addressed to all the employees working under the petitioner. It narrates various acts of indiscipline and finally in the last but one para states that a lock out is being declared with respect to the employees who are mentioned thereafter. It is further stated therein that in case the workmen concerned give the undertaking, as expected by the management, they will be permitted to rejoin. Thereafter names of 22 workmen are mentioned under the caption "workmen covered under lock out." In the last paragraph it is stated that the lock out will be continued until an undertaking for good conduct is given and on the same being given, the workmen concerned will be permitted to rejoin. Thereafter second notice was issued on 19.3.1998. That notice also states at the top that it is addressed to all workmen and again various acts of indiscipline are mentioned and in the last paragraph it is stated therein that the above misdemeanors on the part of the workmen are increasing and that the workmen who are placed under the lock out are forcibily entering into the hotel establishment and indulging into acts of violence. It is therefore decided that so long as all the workers do not give the guarantee, the work will remain suspended as a temporary measure and the workers will not be permitted to enter the establishment until they give the undertaking. The workers are asked to give the undertaking at the earliest so that they can join on duty. Thereafter the expected undertaking is mentioned in a particular form. It principally expects each workman to state that he has read the notice put up by the management on 19.3.1998 and in the event he is allowed to enter the establishment he will do his duties regularly, he will not indulge into indiscipline or illegal acts and will follow the rules and regulations of the establishment fully. It further states that the workman concerned will not remain at the

place of work on the date of weekly off or after working hours on other days. I am told that three out of 22 workmen who are covered in the first notice and 45 out of 125 workmen in the second notice have so far given the undertaking and they have been permitted to join the petitioner establishment. During the pendency of the matter in this Court, efforts were made to settle the matter amicably, but that could not succeed. Mr Sinha, learned advocate for respondent no.2 has however assured that as and when the workmen are allowed to resume their duties, they will resume the work peacefully.

3 The Reference order in the Schedule thereto mentions the dispute referred for adjudication as follows:-

> "Whether the establishment should lift the lock out declared on 12.3.1998 for 22 workmen and on 19.3.1998 for other workmen and whether that should be done by giving full wages for the intervening period to the workmen."

The first submission of Mr Patel, learned counsel appearing for the petitioner, is that the wording of the Reference is one sided and it would affect the defence of the management. He submits that the management does have a substantial defence for whatever action it has taken and it would as well submit before the Tribunal that the actions resorted to by the management did not amount to lock out. He however submitted that the petitioner apprehends that it would be prevented from making such a submission by pointing out that one cannot be permitted to go beyond the terms of the Reference. Mr Patel relied upon a judgement of the Full Bench of the Delhi High Court in the case of M/s INDIA TOURISM DEVELOPMENT CORPORATION V. DELHI ADMINISTRATION reported in 1982 Lab.IC 1309 in this behalf. In that case the real dispute between the parties was as to whether there was a lock out or a closure in the establishment and the Government referred the dispute by assuming that there was a lock out. The order of Reference was held to be liable to be interfered inasmuch as the Labour Court could not travel beyond the terms of the Reference and decide the question as to whether there was a lock out. Mr Patel submits that the said judgement will apply to present facts also.

4 Now, it is material to note that in the present case, out of the two notices which are mentioned in the Schedule to the Reference, the first one i.e. dated

12.3.1998 specifically states in the last but one paragraph thereof that the management was declaring a lock out with respect to 22 workmen who are mentioned in that paragraph. It is no doubt true that prior to this paragraph, various acts of indiscipline are alleged against the workmen but the fact remains that the management has specifically stated that it had declared a lock out with respect to these 22 workmen. It is further stated in the last paragraph of the notice that in the event the workmen concerned give an undertaking as expected by the management, they will be permitted to join. In the second notice dated 19.3.1998, it is specifically stated in the last paragraph that in view of the alleged acts of indiscipline, so long as the workers do not give the undertaking as expected, the work of the establishment will remain temporarily suspended. Thereafter it is stated that the workers concerned are expected to give the undertaking as expected and if they give the same, the will be permitted to resume the duty. Mr Sinha, learned counsel appearing for respondent no.2, therefore submits that in the facts of this case it is apparent that what the management has resorted to is prima facie a lock out and the first notice is that of lock out.

5 Mr Sinha drew my attention to the definition of the concept of lock out as defined under section 2(l) of the Act which reads as under:-

' "lock out" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him; '

Mr Sinha submits that even the second notice is clearly a notice of lock out inasmuch as suspension of work is considered as a lock out under the definition. Hence, in his submission if the Government construes the notices as that of lock out, it cannot be faulted for that.

6 In view of this situation, in my view, the facts of the present case are not fully comparable with the facts in the judgement before the Delhi High Court wherein the issue was as to whether it was a lock out or a closure. As against that, in the present case, in any case, prima facie the action resorted to by the management is apparently in the nature of a lock out. However, the submission of Mr Patel was that the Tribunal would preclude the petitioner from pointing out that what they had resorted to was not a lock out. He therefore

submits that this Court should intervene and this type of Reference which had one sided wording (according to Mr Patel) should be quashed. As stated above, there is a strong prima facie case for the Government to come to the conclusion that there was a lock out and therefore it cannot be said that the Government was in any way in error in referring the dispute in the manner it has worded. I would however like to make it clear that although that is so, it would not and should not restrain the petitioner from making whatever submission they want to make with respect to the action that they have resorted. Whatever defence is permissible to them in law would be available in the Industrial Tribunal to explain their conduct. The dispute referred to is worded this wise, namely, whether the lock out declared through the two notices should be lifted and if so, whether that should be along with an order for payment of back wages. Now, if it is the case of the petitioner that what they have resorted to is not a lock out, they cannot be prevented from making those submissions before the Tribunal. As stated above, there is undoubtedly a strong case for the respondent-government to come to the conclusion that there was a lock out and therefore the government cannot be faulted in referring the dispute in the manner in which it has worded it. Having said that, however it is necessary to state that it is the prima facie opinion of the GOvernment as to how the dispute exists and the same is for the purpose of referring it for adjudication. This opinion of the Government does not bind the petitioner and it would not refrain the petitioner from submitting that its action did not amount to lock out. This, in my view, would take care of the first grievance of Mr Patel. Any such submission of a party concerned with respect to the dispute referred would certainly fall within the terms of the Reference since u/s 10(4) of the Act, the Tribunal is expected `to confine to the points referred and incidental thereto.' These words are sufficiently elastic to take care of such a defence which a party would like to raise.

7 The second submission of Mr Patel is that this is a composite order wherein the dispute is referred for adjudication and simultaneously there is a prohibitory order prohibiting continuance of lock out. Mr Patel submits that there is no substantial dispute as such referred to the Labour Court for adjudication other than lifting of lock out. He submits that there has to be some other dispute during the pendency of which the continuance of strike or lock out would be prevented. He relies upon the Supreme Court judgement in the cae of DELHI ADMINISTRATION V. WORKMEN, EDWARD KEVENTERS

reported in AIR 1978 SC 976. That was a case concerning a strike and the Hon'ble Supreme Court has observed that if there are a number of demands of the workers and if one demand is referred for adjudication and the agitation is prohibited, that would not be fair to the workmen. In para 4 of the said judgement the Hon'ble Supreme Court observed in this behalf as under:-

> "..... Imagine twenty good grounds of dispute being raised in a charter of demands by the workmen and the appropriate Government unilaterally and subjectively deciding against the workmen on nineteen of them and referring only one for adjudication. How can this result in the anomalous situation of the workmen being deprived of their basic right to go on strike in support of those nineteen demands. ..... If Government feels that it should prohibit a strike under S.10 (3) it must give scope for the merits of such a dispute or demand being gone into by some other adjudicatory body by making a reference of all those demands under S.10(1) as disputes."
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> (underlining supplied)

It is in this context that the Hon'ble Supreme Court further observed -- "Before an appropriate Government can pass an order under S.10(3) prohibiting a strike two conditions must exist, that is there must be an industrial dispute in existence and secondly such dispute must have been already referred for adjudication."

8 Mr Patel submits that in the present case the petitioners were insisting on a good conduct bond and there were circumstances which justified that. He therefore submits that whether the petitioners were justified in asking for such a bond should also have been referred for adjudication. This demand of the employer was not referred for adjudication and if that was not so done, the prohibition of lock out was bad. In this behalf, it is material to note that in the reply filed by respondent no.2 union, a number of grievances have been raised. It is stated that the workmen have been making a grievance that they were not being paid wages even in accordance with Minimum Wages Act whereas the management has been alleging acts of indiscipline. There have been acts of violence alleged by either party and therefore Mr Dave appearing for the State Government pointed out that the Government had to intervene in the interest of industrial peace, security of the establishment and also

that of the workmen. The flash points of the controversy were the two lock out notices and it was at that point of time that the Commissioner of Labour made a necessary report and hence the power under section 10(1) of the Act came to be exercised by the State Government. Now in the instant case, the defence of the petitioner-employer is principally based on the acts of indiscipline by the workmen concerned and therefore insistence on the good conduct bond. As stated above, it is not some thing totally different or disconnected from the dispute which has been referred for adjudication and as stated earlier the petitioner will have full right to make their submissions before the Tribunal including on the defence based on the alleged indiscipline on the part of the workmen and the necessity to insist on the undertaking. It cannot therefore be said that it was necessary to include this particular aspect specifically and that such a non-inclusion is fatal to the Reference which has been made by the State Government. With respect to the submission that there ought to be a prior pending reference before the issuance of prohibitory order, Mr Patel relied upon the above above referred observations of the Hon'ble Supreme Court . As stated above, those observations are to be read in the context, and a single judge of the Bombay High Court had a similar situation before him in the case of Digvijay Cement Co. Ltd. v. State of Maharashtra reported in 1986 (52) FLR 362. The dispute referred for adjudication was as follows:-

"Whether the suspension of operations and lock out effected in the Company's establishment with effect from 11th March 1985 and 31st March 1985 respectively are justified? If not, what relief monetary or otherwise, the workmen are entitled to?"

In that case, on the same date, the Government passed another order in exercise of powers conferred by sub-section (3) of Section 10 of the Act prohibiting the continuance of lock out in connection with the dispute referred to the Tribunal for adjudication. The learned single judge held that issuance of two orders simultaneously was not in any way erroneous. In the present case, both these directions are given in the same order. When there is a reference of a dispute between the parties and when the same is referred for adjudication under section 10(1), the State Government does have an occasion to exercise its powers under sub-section (3) of Section 10 of the Act. Merely because that is done in the same order that cannot by itself

vitiate the reference order.

9 Thereafter a number of judgements were cited by Mr Patel pointing out the necessity of the good conduct bond and the judgements wherein such good conduct bonds were held to be valid. Thus in 1984 2 LLJ 336 a large number of workmen had given good conduct bond and a few had declined to give it and the Government refused to refer the dispute for adjudication. A Division Bench held that the Government's decision was justified in the facts of the case. Mr Patel also relied upon another judgement of the single judge of this Court reported in 1995(2) GLH 680 wherein on facts of the case undertaking to do the normal work was held to be necessary. Mr Patel then relied upon a Division Bench judgement of the Bombay High Court reported in 1996 (14) FLR page 106 wherein also in the facts of that case the Court had no hesitation in holding that insistence of the Government in taking an undertaking from workmen was fully justified. A similar view is also taken by another single judge of the Bombay High Court in 1986 (2) CLR 242. Mr Patel then relied upon an unreported order of the Hon'ble Supreme Court dated 2.8.1990 in Interim Application in SLP No. / (number not available) in the case of VALSAD DISTRICT WORKMEN ASSOCIATION V. EXCEL SPINDLES wherein the workers were told to give unconditional undertaking to resume on duty. The aforesaid judgements undoubtedly have their force. On the other hand, Mr Sinha appearing for respondent no.2 has a number of things to say and in his view the insistence on the undertaking in the instant case was not at all called for. As seen in the above judgements they were in the facts of the cases before the Judges concerned. When the Tribunal hears the present matter, it will be for the Tribunal to come to its own conclusion and to give a finding on facts as to whether the conduct on the part of the petitioner-employer was correct or otherwise. When the reference is made to a competent tribunal to decide the controversy it would not be proper for this Court to express any opinion on merits of the contention of rival parties.

10 One other submission of Mr Patel was that because of the kind of one-sided wording of the Reference the employer is put to disadvantage and it is necessary to rephrase the Reference. As far as this submission is concerned, in my view, (as stated earlier) in the given situation on the facts as they stood before the Government, the Government has applied its mind and made the Reference and prima facie the wording cannot be

faulted for. I have also stated that it would however not prevent the petitioner-employer from raising whatever defence is permissible to the them in law and that takes care of the apprehension expressed by the petitioner.

11 Mr Patel also submitted that the discretion exercised by the Government in the present case was erroneously exercised and the interference was required. In my view, this is a matter of best judgement to be formed by the Government and it is a discretionary order which in the facts of the case the Government has to pass. Ultimately, it is a matter connected with industrial peace and security and safety of the employer as well as the workmen concerned as also the establishment. The idea in making a Reference and prohibiting a strike or lock out pending the Reference is to maintain the industrial peace and security. In fact, if the Government does not take any such action, it will be the Government which will be faulted for its inaction. Therefore, Mr Dave points out that the action taken is a correct discretion and submits that it could not be interfered with. He submits that there have been series of judgements right from MADRAS STATE V. C.P. SARATHY (reported in AIR 1953 SC 53) wherein the Supreme Court has cautioned that "the Court cannot therefore canvass the order of reference closely to see if there was any material before the Government to support conclusion, as if it was a judicial or quasi-judicial determination."

12 Mr Patel lastly submits that the aforesaid submission with respect to undertaking was to contend that by stating that insistence on a bond/undertaking does not amount to lock out. He states that it was in this context that those authorities were cited by him. It will be open for Mr Patel to make all these submissions before the Tribunal which is supposed to proceed with the matter expeditiously. The petition is therefore summarily rejected with no order as to costs.

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